

24. (Amended) A first financial instrument representing an ownership interest in a first portfolio comprising stocks in the National Association of Securities Dealers Automated Quotations System (NASDAQ)-only component of the Standard & Poor's 100 (S&P 100), wherein the market capitalization weight of each of the individual NASDAQ stocks in the first portfolio is substantially similar to that stock's corresponding market capitalization weight in the S&P 100, divided by the combined market capitalization weight of the first portfolio within the S&P 100.

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### REMARKS

In the October 2, 2002 office action, claims 1-24 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,035,287 to Stallaert. Claims 1-24 are being submitted for the Examiner's consideration.

#### Amendments to the Claims

Claims 23 & 24 have been amended to correct an obvious grammatical error.

#### Rejection of claims 1-24

Page 2, line 6 – page 6, line 8, of the October 2, 2002 office action was virtually identical to page 3, line 16 – page 7, line 14 of the June 17, 2002 office action. It appears that the Examiner simply copied the previous office action, adding only a reference to the amended language in claims 1, 10 and 15 that recites “with the M different securities being a subset of the N different securities”.

As to the arguments presented in the amendment filed July 11, 2002, the Examiner simply stated, without elucidation, that “Applicant's arguments filed July 11, 2002 have been fully considered but they are not persuasive.” The Examiner made no effort to substantively respond to the arguments presented in the July 11, 2002 amendment.

#### Examiner's “Product by Process” Comment

On pages 6-7 of the office action, the Examiner asserted that pending claims 1-24 are “product by process” claims. The Examiner's analysis is traversed because claims 1-24 are not “product-by-process” claims. Claims 1-14 and 16-24 are all directed to one or more financial instruments, and the claim language therein establishes attributes of the claimed financial instruments. Thus, language such as: